STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED September 14, 2006
v	No. 260942 Kent Circuit Court
JOHN KENNETH WALMA, Defendant-Appellee.	LC No. 02-001981-FH

Before: Sawyer, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Defendant John Kenneth Walma was charged with one count of resisting or obstructing a police officer during the officer's discharge of his duty, MCL 750.479. The prosecutor appeals as of right from the trial court's order dismissing this charge. We reverse.

This case, which is before us a second time, arises out of a struggle between defendant and Grand Rapids police officers. The struggle occurred when the officers attempted to execute a warrant for defendant's arrest at his home in Byron Center, Michigan. Defendant was charged with resisting or obstructing a police officer. In May 2003, the trial court dismissed this charge after concluding that the Grand Rapids police officers were not "duly authorized," as required by MCL 750.749, to execute the warrant in Byron Center, an area outside the city limits of Grand Rapids.

In *People v Walma*, unpublished opinion per curiam of the Court of Appeals, issued August 17, 2004 (Docket No. 249280), this Court held that the officers were duly authorized to execute the warrant at defendant's home in Byron Center, and we reversed the trial court's decision dismissing the charge. In particular, we ruled that, pursuant to MCL 767.31, the officers were authorized to execute the warrant in any part of the state, not exclusively within the jurisdiction of Grand Rapids. *Walma*, *supra* at slip op pp 4-6.

On remand, defendant again moved to dismiss the charge. He argued that this Court's previous ruling was made under the erroneous assumption that the officers were executing an arrest warrant when, in fact, the warrant issued for his arrest was actually a bench warrant. He claimed that this fact, discovered only after this Court's initial ruling, constituted a material change in fact, so the law of the case doctrine did not apply. The trial court agreed and granted defendant's motion to dismiss.

We review de novo the trial court's application of the law of the case doctrine. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). According to the law of the case doctrine, "an appellate court's decision regarding a particular issue is binding on courts of equal or subordinate jurisdiction during subsequent proceedings in the same case." *People v Herrera (On Remand)*, 204 Mich App 333, 340; 514 NW2d 543 (1994). Therefore, "a trial court may not take any action on remand that is inconsistent with the judgment of the appellate court." *Kalamazoo v Dep't of Corrections (After Remand)*, 229 Mich App 132, 135; 580 NW2d 475 (1998). The trial court's dismissal below was inconsistent with our prior ruling. The basis of our previous ruling was MCL 767.31, which states, in relevant part, "Every warrant . . . may be executed in any part of this state." Whether a magistrate issues a criminal warrant purely on the basis of a sworn complaint as in MCL 764.1a, on a complaint underlying an appearance ticket as in MCL 764.9e, or on any other proper basis, the magistrate's action is an arrest warrant or summons subject to criminal process. Therefore, as we stated in our original opinion, MCL 767.31 applies, and the officers were within their authority to execute process. The trial court's second dismissal of the charge was erroneous.

We also stress that the trial court's reclassification of the warrant as a bench warrant and not an ordinary arrest warrant was not a material change in the facts. See *Kalamazoo, supra*. The original panel was apparently well aware that the magistrate had issued the warrant pursuant to defendant's failure to appear on his ordinance violation. *Walma, supra* at slip op p 5 n 12. Our legal determination that the warrant was subject to MCL 767.31 and that the officers could serve it at least within the confines of Kent County, see *Walma, supra* at slip op p 6 n 13, was a legal determination founded on the presented facts. See *Allen v Michigan Bell Telephone Co*, 61 Mich App 62, 65; 232 NW2d 302 (1975). The record contains the same information regarding the warrant as it did the first time it was sent to this Court on appeal. A party's failure to argue the most beneficial facts on appeal does not allow the party to claim later that the facts have changed. Otherwise the law of the case doctrine would be seriously undermined by endlessly shifting legal classifications and arguments strategically withheld as parachutes for subsequent review. Our original opinion held that the officers had the legal authority to serve defendant with the identical warrant at issue in this appeal, *Walma*, *supra*, and the trial court was required to abide by that legal holding, notwithstanding defendant's assertion that we had misunderstood the legal nature of the warrant. *Kalamazoo, supra*.

Reversed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell